

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KEITH CUNNINGHAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-17-1294-R
)	
CITY OF WAUKOMIS POLICE DEPT.,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff, a federal prisoner appearing pro se, filed a Complaint under 42 U.S.C. § 1983 [Doc. No. 1] and provided inmate savings statements, which were filed as a motion for leave to proceed in forma pauperis, [Doc. No. 2]. United States District Judge David L. Russell referred the matter for initial proceedings in accordance with 28 U.S.C. §636(b)(1)(B) and (C). The Court ordered Plaintiff to cure deficiencies in both his documents, [Doc. No. 6], and Plaintiff filed an Amended Complaint (alleging excessive force during his arrest in Oklahoma), [Doc. No. 8], and an Application for Leave to Proceed in Forma Pauperis, [Doc. No. 9].

A review of Plaintiff's Application indicates that he had \$567.16 in his institutional savings account when he filed his Amended Complaint, [Doc. No. 9, at 3 & Att. 1 at 4], and thus has sufficient funds to prepay the \$400 filing fee. Indeed, Plaintiff's deposits for the six months preceding the filing of his Amended Complaint total \$2104.56. *Id.*, Att. 1 at 5. Because Plaintiff has sufficient funds available to prepay the entire filing fee, Plaintiff's Application for Leave to Proceed in Forma Pauperis [Doc. No. 9] should be denied. *See* 28 U.S.C. § 1915(a)(1); *see also Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

If Plaintiff does not pay the \$400 filing fee in full to the Clerk of the Court within twenty-one days of an order adopting this Report and Recommendation, it is recommended that this action be dismissed, without prejudice to refiling, pursuant to LCvR 3.3(e).

Plaintiff is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed with the Clerk of the District Court by January 24, 2018. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *See Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

ENTERED this 3rd day of January, 2018.



BERNARD M. JONES
UNITED STATES MAGISTRATE JUDGE